



Comptroller General
of the United States

Washington, D.C. 20548

144142^{Ervin}

Decision

Matter of: East Carolina Builders

File: B-243926

Date: June 10, 1991

Karl Dix, Jr., Esq., Smith, Currie and Hancock, for the protester.

Barry Cohen, Esq., Department of Transportation, U.S. Coast Guard, for the agency.

David J. Ervin, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee was improperly allowed to correct a mistake in its bid is dismissed as untimely where the protester failed to diligently pursue information regarding whether a basis for protest existed after notice of the award was published in the Commerce Business Daily.

DECISION

East Carolina Builders protests the award of a contract to Atlantic Coast Contractors, Inc., under invitation for bids (IFB) No. DTCG83-91-B-3WF013, issued by the Department of Transportation, U.S. Coast Guard, for the installation of a water distribution system. East Carolina argues that the Coast Guard improperly allowed Atlantic Coast to correct a mistake in its bid.

We dismiss the protest.

The bid opening date for the IFB was January 24, 1991. Award was made to Atlantic Coast on March 19, notice of which was published in the Commerce Business Daily (CBD) on March 26. The CBD synopsis included information regarding the type of contract awarded, the name of the awardee, and the contract price, which was listed as \$105,305. By letter dated May 3, the Coast Guard advised all unsuccessful bidders that the awardee had made a mistake in its original bid of \$89,825, and

had been permitted to increase its bid to \$105,305. After receipt of the letter, East Carolina filed its protest with this Office on May 7.

Under our Bid Protest Regulations, protests such as East Carolina's must be filed within 10 days after the basis for the protest is known or should have been known, whichever is earlier. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(2)); Technical Co., Inc., B-233213.2, Feb. 26, 1990, 90-1 CPD ¶ 222. This timeliness rule reflects the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. To ensure that the timeliness requirements are met, a protester has the affirmative obligation to diligently pursue the information that forms the basis for its protest. Horizon Trading Co., Inc./ Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86.

Here, East Carolina was on notice both of the original bid prices^{1/} and, by virtue of the publication of the notice of award in the CBD, of the fact that award was made at a price higher than Atlantic Coast's original bid. (See Harndon & Thompson, B-240748, Oct. 24, 1990, 90-2 CPD ¶ 327 (protesters are charged with constructive notice of contents of procurement synopsis published in the CBD since it is the official public medium for identifying proposed contract actions)). East Carolina argues that, even if it is held to constructive knowledge of the award based on the CBD notice, it was not on notice of the actual basis of the protest--the allegedly improper correction of the awardee's bid--until it received the May 3 letter from the Coast Guard explaining the reason for the discrepancy between the awardee's original bid and the award price. While the CBD notice did not explain the difference in prices, at a minimum, the price discrepancy triggered the protester's duty to seek further information regarding the basis for the change in price. During the period between publication of the award and when the protest was filed, from March 26 to May 7, East Carolina apparently made no attempt to obtain information from the agency regarding the award made to Atlantic Coast at a price which

^{1/} At a minimum, East Carolina had constructive knowledge of the bids since they were revealed at bid opening. East Carolina does not indicate whether it attended the bid opening and therefore also had actual knowledge of the bid prices.

was clearly higher than the awardee's original bid. We therefore find that the protest is untimely because the protester failed in its duty to pursue diligently the basis of its protest by delaying 6 weeks without attempting to obtain information concerning the award to Atlantic Coast. Id.

The protest is dismissed.

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